

Jeffrey D. Hern, OSB #043138
Email: jhern@schwabe.com
Schwabe, Williamson & Wyatt, P.C.
Pacwest Center
1211 SW Fifth Avenue, Suite 1900
Portland, OR 97204
Telephone: 503.222.9981
Facsimile: 503.796.2900

Of Attorneys for Defendant Berkshire
Life Insurance Company of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

JOHN BELKNAP,

Plaintiff,

v.

BERKSHIRE LIFE INSURANCE
COMPANY OF AMERICA,

Defendant.

No. _____

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1332, 1441, AND 1446
(DIVERSITY OF CITIZENSHIP)**

DEMAND FOR JURY TRIAL

Defendant Berkshire Life Insurance Company of America (“Berkshire” or “Removing Defendant”), by and through its undersigned counsel, removes this action from the Circuit Court of the State of Oregon, County of Wasco, where it is currently pending, to the United States District Court for the District of Oregon pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. As addressed

below, diversity jurisdiction exists in this action. See U.S.C. § 1332(a). In support of this removal, Removing Defendant states as follows:

I. INTRODUCTION AND BACKGROUND.

1. On or about November 12, 2015, Plaintiff filed a Complaint (“Complaint”) captioned *John Belknap v. Berkshire Life Insurance Company of America*, Case No. 15CV30761, in the Circuit Court for the State of Oregon for the County of Wasco. (See Compl., attached hereto as part of Exhibit A.) Plaintiff alleges Berkshire wrongly terminated his disability benefits under Policy Nos. Z0148340 and Z1743940 in November 2013 and has suffered monetary damages as a result of said termination.

2. As more fully set forth below, this case is properly removed to this Court under 28 U.S.C. § 1441 because (1) Removing Defendant has satisfied the procedural requirements for removal and (2) this Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1332 and 1441.

II. REMOVING DEFENDANT HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

1. Removal is timely pursuant to 28 U.S.C. § 1446(b) because less than thirty (30) days have passed since service of the Complaint on the Removing Defendant.¹

2. Pursuant to 28 U.S.C. § 117 and LR 3-2(a)(3), the United States District Court for the District of Oregon, Portland Division, is the federal judicial district and division encompassing the Circuit Court of the State of Oregon, County of Wasco, where this lawsuit was originally filed. Venue is thus proper because this is the “district and division embracing the place where such action is pending.” See 28 U.S.C. § 1441(a).

3. As required by 28 U.S.C. § 1446(a), Removing Defendant attaches a copy of all

¹ Subject to and without waiving its right to assert any defenses as to service, the Removing Defendant acknowledges that Plaintiff attempted service on it on or around November 23, 2015. As such, removal is timely for purposes herein.

process, pleadings, and orders served upon them, including summons and the Complaint, which is attached hereto as Exhibit A.

4. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being promptly served upon counsel for Plaintiff and a copy is being filed with the Clerk of the Circuit Court of the State of Oregon, County of Wasco. A true and correct copy of “Defendants’ Notice to State Court of Removal of Action Under 28 U.S.C. §§ 1332, 1441, and 1446 (Diversity of Citizenship)” filed in the Circuit Court of the State of Oregon, County of Wasco, is attached hereto as Exhibit B.

III. REMOVAL IS PROPER BECAUSE THE COURT HAS SUBJECT MATTER JURISDICTION UNDER 28 U.S.C. §§ 1332 AND 1441.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1332 and 1441 because this is a civil action in which the amount in controversy exceeds \$75,000, exclusive of costs and interest, and is between citizens of different states.

A. Complete Diversity of Citizenship Exists Among All Proper Parties.

6. Upon information and belief, Plaintiff is, and at the time of the filing of the action was, a citizen of Oregon. (*See* Compl. ¶ 1.)

7. Defendant Berkshire Life Insurance Company of America is, and at the time of the filing of the action was, a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and having its principal place of business in Massachusetts. Berkshire Life Insurance Company of America is therefore a citizen of Massachusetts for purposes of determining diversity. *See* 28 U.S.C. § 1332(c)(1).

8. Accordingly, this action involves “citizens of different States.” 28 U.S.C. § 1332(a)(1)-(2). Because Plaintiff is an Oregon citizen and no defendant properly joined and served is a citizen of the State of Oregon, removal of this action is proper under 28 U.S.C. § 1441(b).

B. The Amount-In-Controversy Requirement Is Satisfied.

9. The amount-in-controversy requirement of 28 U.S.C. § 1332(a) is satisfied by a

preponderance of the evidence based on the nature and extent of the damages alleged in the Complaint. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 699 (9th Cir. 2007); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th Cir. 1996).

10. In this case, it is clear from the face of Plaintiff's Complaint that the "matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs." 28 U.S.C. § 1332(a). Plaintiff seeks economic damages in the amount of \$168,480.00. (Compl. ¶¶ 25, 28, Prayer.) In addition, Plaintiff demands judgment against Berkshire for future economic damages and attorney fees. (Compl. ¶¶ 26, 29, Prayer.)

11. Given the nature and extent of damages alleged by Plaintiff, it is clear from the face of the Complaint that the amount-in-controversy is satisfied.

WHEREFORE, Defendant Berkshire Life Insurance Company of America hereby removes the above-captioned action from the Circuit Court of the State of Oregon, County of Wasco, to the United States District Court for the District of Oregon, Portland Division.

Dated this 22nd day of December, 2015.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ Jeffrey D. Hern
Jeffrey D. Hern, OSB #043138
Email: jhern@schwabe.com
Telephone: 503.222.9981
Facsimile: 503.796.2900

Attorneys for Defendant Berkshire Life
Insurance Company of America

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 2015, I caused to be served the foregoing NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. §§ 1332, 1441, AND 1446 (DIVERSITY OF CITIZENSHIP) on the following party as follows:

Michael J. Knapp
Attorney at Law
621 S.W. Morrison Street, Suite 900
Portland, OR 97205
Telephone: 503-222-6508
Facsimile: 503-222-6518
Email: mknapp@spiretech.com

<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Facsimile
<input type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Overnight Courier
<input type="checkbox"/>	Email
<input checked="" type="checkbox"/>	electronic service
<input type="checkbox"/>	other (specify) _____

Of Attorneys for Plaintiff

s/ Jeffrey D. Hern

Jeffrey D. Hern, OSB #043138